REMARKS

Claims 1-36 were in the application as filed. The Examiner has required restriction between allegedly patentably distinct Species A (Figure 2), and Species B (Figure 8). The Examiner asserts that several claims are generic, but does not identify the generic claims.

In restricting the Applicant's application to one of the above-identified Species, the Examiner has made too narrow a restriction requirement. Applicant respectfully requests that the Examiner consider the withdrawal of the restriction requirement in light of the arguments advanced herein. Alternatively, Applicant provisionally elects Species A, claims 1-5, 8-23, and 26-36 with traverse.

Restriction Requirement

The Examiner has required restriction between alleged Species A (Figure 2) and alleged Species B (Figure 8), both of which comprise a reflective element assembly having a reflective surface and a reflective surface mounting panel for mounting the reflective surface thereto, a mounting frame, and an interlocking fastener assembly for removably attaching the reflective element assembly to the mounting frame. Species A comprises a reflective element having a reflective surface and a glass lens. In Species B, the glass lens is eliminated and the reflective surface is a film. The restriction requirement is respectfully traversed as being improper.

Restriction may be required if two or more "independent and distinct" inventions are claimed in one application. 35 U.S.C. §121. Alleged Species A and B have the unifying concept of a reflective element assembly having a reflective surface and a reflective surface mounting panel for mounting the reflective surface thereto, a mounting frame, and an interlocking fastener assembly for removably attaching the reflective element assembly to the mounting frame. Species A and B are not independent and distinct and, thus, should not be subject to restriction.

According to the Manual of Patent Examination Procedure §802.01, "independent" means that there is "no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation, or effect." "Distinct" means that "two or more subjects as disclosed are related, for example, as a combination and a part (subcombination) thereof, process and apparatus for its practice, process and product made, etc., but are capable of separate manufacture, use, or sale as claimed, **and are patentable over each other.**" (Emphasis added.)

Alleged Species A and B are dependent, not independent, because they both have the same basic design, i.e. a reflective element assembly having a reflective surface and a reflective surface mounting panel, a mounting frame, and an interlocking fastener assembly; the same mode of operation, i.e. selective joining and separation of the interlocking fastener assembly by the interlocking of an array of fastening elements; the same function, i.e. attachment and disattachment of the reflective element assembly from the mounting frame; and the same effect, i.e. facilitation of the assembly of the reflective element assembly to the mounting frame, and are therefore related. The only difference between the Species is in the reflective element, which is a reflective surface and glass lens in one embodiment, and a reflective film in the other. This difference is immaterial. The basic structure and operation of the mirror systems are the same in both Species.

Moreover, alleged Species A and B have not been shown to be distinct because the Examiner has not shown that they are patentable over each other, particularly in view of the minor distinction between the structures of the reflective elements in the two embodiments. Finally, a search of the prior art would not be duplicative and Applicant is at a loss as to how the Examiner would be burdened by having to examine all the groups of claims since they relate to such intertwined subject matter.

As the Examiner is undoubtedly aware, 37 CFR 1.141(a) states:

> Two or more independent and distinct inventions may not be claimed in one national application, except that more than one species of an invention, not to exceed a reasonable number, may be specifically claimed in different claims in one national application, provided the application also includes an allowable claim generic to all the claimed species and all the claims to species in excess of one are written in dependent form (§ 1.75) or otherwise include all the limitations of the generic claim.

See, also, Manual of Patent Examining Procedure, §§806.04(a), 806.04(h). Thus, 37 CFR 1.141(a) recognizes that a single application can properly include claims to a reasonable number of species greater than one provided the application includes an allowable generic claim from which the species claims depend. This is precisely the situation with respect to the Application at issue. While no decision has yet been made concerning the allowability of generic claims, the species claims must be examined if a claim generic to the species is allowed. *See, MPEP §809.02(c).*

There is good reason to maintain all species claims in the application for examination pending allowance of one or more of generic claims. The number of species, i.e. two, is not unreasonable. Applicant submits that there is a high likelihood that one or more generic claims will be allowed. Applicant would withdraw essentially only 4 claims pursuant to the species restriction requirement. Thus, the burden of maintaining the species claims in the application is negligible, and far outweighed by the burden of continuing examination of the withdrawn claims after allowance of a generic claim. Nevertheless, Applicant confirms a provisional election with traverse of alleged Species A, claims 1-5, 8-23, and 26-36.

Election of Species

Applicant provisionally elects alleged Species A, claims 1-5, 8-23, and 26-36, with traverse.

The Examiner has indicated that several claims are generic, but has not identified the generic claims. As the Examiner is undoubtedly aware, MPEP §809.02(c) states:

(B) When a generic claim is subsequently found to be allowable, and not more than a reasonable number of additional species are claimed, treatment shall be as follows:

(1) When all claims to each of the additional species are embraced by an allowable generic claim as provided by 37 CFR 1.141, applicant must be advised of the allowable generic claim and that **claims drawn to the nonelected species are no longer withdrawn** since they are fully embraced by the allowed generic claim. (Emphasis added.)

Upon the allowance of a generic claim, Applicant will be entitled to consideration of claims 5, 6, 24, and 25 as drawn to the species which is non-elected as a result of the restriction requirement. *See, 37 CFR 1.146.*

CONCLUSION

If there are any outstanding issues which the Examiner feels may be resolved by way of telephone conference, the Examiner is cordially invited to contact the undersigned to resolve these issues. Early notification of allowability is respectfully requested.

Respectfully submitted,

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